

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

IRENE RIGGS, an individual,

Plaintiff,

vs.

LIFE CARE CENTERS OF AMERICA,  
INC., a Tennessee Corporation,

Defendant.

Civil Action No. 2:16-cv-01525 TSZ

STIPULATED PROTECTIVE  
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information by defendant Life Care Centers of America, Inc. (“Life Care”) for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged by Life Care: quality indicator reports, investigation files,

1 personnel files for any employee other than Plaintiff, policies and procedures, and confidential  
2 or sensitive information concerning Life Care residents, employees, operations, business,  
3 practices, policies, and procedures.

### 4 3. SCOPE

5 The protections conferred by this agreement cover not only confidential material (as  
6 defined above), but also (1) any information copied or extracted from confidential material; (2)  
7 all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
8 testimony, conversations, or presentations by parties or their counsel that might reveal  
9 confidential material. However, the protections conferred by this agreement do not cover  
10 information that is in the public domain or becomes part of the public domain through trial or  
11 otherwise.

### 12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use confidential material that is  
14 disclosed or produced by another party or by a non-party in connection with this case only for  
15 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
16 disclosed only to the categories of persons and under the conditions described in this  
17 agreement. Confidential material must be stored and maintained by a receiving party at a  
18 location and in a secure manner that ensures that access is limited to the persons authorized  
19 under this agreement.

20 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
21 ordered by the court or permitted in writing by the designating party, a receiving party may  
22 disclose any confidential material only to:

23 (a) the receiving party's counsel of record in this action, as well as  
24 employees of counsel to whom it is reasonably necessary to disclose the information for  
25 this litigation;

26 (b) the officers, directors, and employees (including in house counsel) of the  
27 receiving party to whom disclosure is reasonably necessary for this litigation, unless the

1 parties agree that a particular document or material produced is for Attorney's Eyes  
2 Only and is so designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for  
4 this litigation and who have signed the "Acknowledgment and Agreement to Be  
5 Bound" (Exhibit A);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the duplication  
8 of confidential material, provided that counsel for the party retaining the copy or  
9 imaging service instructs the service not to disclose any confidential material to third  
10 parties and to immediately return all originals and copies of any confidential material;

11 (f) during their depositions, witnesses in the action to whom disclosure is  
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
13 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the  
14 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
15 confidential material must be marked "confidential";

16 (g) the author or recipient of a document containing the information or a  
17 custodian or other person who otherwise possessed or knew the information.

18 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
19 referencing such material in court filings, the filing party shall indicate to the designating party  
20 what measures are being taken to protect confidential information and the designating party  
21 can object or indicate a preferred alternative method including whether the designating party  
22 will remove the confidential designation, whether the document can be redacted, or whether a  
23 motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth  
24 the procedures that must be followed and the standards that will be applied when a party seeks  
25 permission from the court to file material under seal.

26 5. DESIGNATING PROTECTED MATERIAL  
27

1           5.1     Exercise of Restraint and Care in Designating Material for Protection. Each  
2 party or non-party that designates information or items for protection under this agreement  
3 must take care to limit any such designation to specific material that qualifies under the  
4 appropriate standards. The designating party must designate for protection only those parts of  
5 material, documents, items, or oral or written communications that qualify, so that other  
6 portions of the material, documents, items, or communications for which protection is not  
7 warranted are not swept unjustifiably within the ambit of this agreement. Mass, indiscriminate,  
8 or routinized designations are prohibited. Designations that are shown to be clearly unjustified  
9 or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the  
10 case development process or to impose unnecessary expenses and burdens on other parties)  
11 expose the designating party to sanctions. If it comes to a designating party's attention that  
12 information or items that it designated for protection do not qualify for protection, the  
13 designating party must promptly notify all other parties that it is withdrawing the mistaken  
14 designation.

15           5.2     Manner and Timing of Designations. Except as otherwise provided in this  
16 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
17 ordered, disclosure of discovery material that qualifies for protection under this agreement  
18 must be clearly so designated before or when the material is disclosed or produced.

19                 (a)     Information in documentary form: (*e.g.*, paper or electronic documents  
20 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
21 proceedings), the designating party must affix the word "CONFIDENTIAL" to each  
22 page that contains confidential material. If only a portion or portions of the material on  
23 a page qualifies for protection, the producing party also must clearly identify the  
24 protected portion(s) (*e.g.*, by making appropriate markings in the margins).

25                 (b)     Testimony given in deposition or in other pretrial or trial proceedings:  
26 the parties must identify on the record, during the deposition, hearing, or other  
27 proceeding, all protected testimony, without prejudice to their right to so designate

1 other testimony after reviewing the transcript. Any party or non-party may, within  
2 fifteen days after receiving a deposition transcript, designate portions of the transcript,  
3 or exhibits thereto, as confidential.

4 (c) Other tangible items: the producing party must affix in a prominent  
5 place on the exterior of the container or containers in which the information or item is  
6 stored the word "CONFIDENTIAL." If only a portion or portions of the information or  
7 item warrant protection, the producing party, to the extent practicable, shall identify the  
8 protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
10 designate qualified information or items does not, standing alone, waive the designating party's  
11 right to secure protection under this agreement for such material. Upon timely correction of a  
12 designation, the receiving party must make reasonable efforts to ensure that the material is  
13 treated in accordance with the provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
16 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
18 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
20 original designation is disclosed.

21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
22 regarding confidential designations without court involvement. Any motion regarding  
23 confidential designations or for a protective order must include a certification, in the motion or  
24 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
25 conference with other affected parties in an effort to resolve the dispute without court action.  
26 The certification must list the date, manner, and participants to the conference. A good faith  
27 effort to confer requires a face-to-face meeting or a telephone conference.

1           6.3   Judicial Intervention. If the parties cannot resolve a challenge without court  
2 intervention, the designating party may file and serve a motion to retain confidentiality under  
3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
4 persuasion in any such motion shall be on the designating party. Frivolous challenges, and  
5 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and  
6 burdens on other parties) may expose the challenging party to sanctions. All parties shall  
7 continue to maintain the material in question as confidential until the court rules on the  
8 challenge.

9   7.   PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
10 OTHER LITIGATION

11       If a party is served with a subpoena or a court order issued in other litigation that  
12 compels disclosure of any information or items designated in this action as  
13 “CONFIDENTIAL,” that party must:

14           (a)   promptly notify the designating party in writing and include a copy of  
15 the subpoena or court order;

16           (b)   promptly notify in writing the party who caused the subpoena or order to  
17 issue in the other litigation that some or all of the material covered by the subpoena or  
18 order is subject to this agreement. Such notification shall include a copy of this  
19 agreement; and

20           (c)   cooperate with respect to all reasonable procedures sought to be pursued  
21 by the designating party whose confidential material may be affected.

22   8.   UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23       If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
24 confidential material to any person or in any circumstance not authorized under this agreement,  
25 the receiving party must immediately (a) notify in writing the designating party of the  
26 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
27 protected material, (c) inform the person or persons to whom unauthorized disclosures were

made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, all confidential information is to be destroyed. Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material. The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: March 31, 2017

DATED: March 31, 2017

MERCER ISLAND LAW GROUP PLLC  
Attorneys for Plaintiff

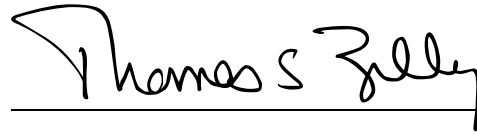
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 DATED: April 6, 2017.

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4 Thomas S. Zilly  
5 United States District Judge



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I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety  
and understand the Stipulated Protective Order that was issued by the United States District  
Court for the Western District of Washington on \_\_\_\_\_ [date] in the case of  
Riggs v. Life Care Centers of America, Inc., United States District Court, Western District of  
Washington Case No. Civil Action No. 2:16-cv-01525 TSZ. I agree to comply with and to be  
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge  
that failure to so comply could expose me to sanctions and punishment in the nature of  
contempt. I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_